

Message Text

CONFIDENTIAL

PAGE 01 BERLIN 05191 051242Z

51

ACTION L-01

INFO OCT-01 SS-14 ISO-00 EUR-08 INRE-00 SCA-01 SCS-01

CPR-01 PPT-01 SP-02 INR-05 CIAE-00 NSC-05 NSCE-00

SSO-00 /040 W

----- 035275

O R 051155Z FEB 75

FM AMEMBASSY BERLIN

TO SECSTATE WASHDC IMMEDIATE 359

INFO AMEMBASSY BONN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMEMBASSY VIENNA

USMISSION USBERLIN

USMISSION NATO

C O N F I D E N T I A L BERLIN 5191

LIMDIS

E.O. 11652: GDS

TAGS: PFOR, PDIP, CGEN, GE, GW, US

SUBJECT: CONSULAR NEGOTIATIONS: EMASSY VIEWS ON THE
NATIONALITY QUESTION

REF: STATE 012391

1. THE EMBASSY DOES NOT PRESENTLY HOLD ALL OF THE
DOCUMENTS REFERRED TO IN THE TRAFFIC ON THIS SUBJECT,
AND WE ARE HANDICAPPED BY NOT HAVING ON OUR STAFF AN
EXPERT IN INTERNATIONAL AND CONSULAR LAW. NEVERTHELESS,
WE HAVE GIVEN THOUGHT TO THE U.S. INTERESTS INVOLVED
IN THE FORTHCOMING CONSULAR CONVENTION NEGOTIATIONS.
THIS MESSAGE CONCERNS THE KEY ISSUE OF NATIONALITY.

2. IT SEEMS OBVIOUS TO US THAT THE GDR BELIEVES,
FOLLOWING ITS RECOGNITION BY THE U.S. AND OTHER
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BERLIN 05191 051242Z

WESTERN COUNTRIES AND THE ESTABLISHMENT OF DIPLOMATIC

RELATIONS, THAT THE WORLD (OR MUCH OF IT) CONSIDERS IT TO BE A STATE, WITH ALL THE SOVEREIGN RIGHTS ACCRUING THERETO, INCLUDING THE RIGHT TO DEFINE WHO IS OR IS NOT A CITIZEN UNDER ITS OWN LAW. THIS IS ALL THE MORE PERTINENT WHEN RECOGNITION OF THE GDR INCLUDES A CLEAR DISTINCTION BETWEEN IT AND THE FRG. THE GDR, THEREFORE, CAN BE EXPECTED TO COME TO THE NEGOTIATING TABLE WITH A FIRM AND EVERN AGGRESSIVE POSITION ON NATIONALITY. FOR REASONS GIVEN BELOW, HOWEVER, WE DO NOT BELIEVE THAT THE GDR SHOULD BE PERMITTED TO LEAD US ANY DEEPER INTO THE ISSUE OF "NATIONALITY" THAN WHERE WE AT PRESENT ARE.

3. WE HAVE DIFFICULTY IN DISTINGUISHING BETWEEN "NATIONALITY" AND "CITIZENSHIP" IN TERMS OF U.S. LAW. (IT IS OUR UNDERSTANDING THAT A U.S. CITIZEN IS ALSO A U.S. NATIONAL, POSSESSING RIGHTS GUARANTEED BY THE CONSTITUTION.) WE ALSO UNDERSTAND THAT ANY ALIEN, INCLUDING THOSE DOCUMENTED BY EITHER GDR OR THE FRG, WHO IS IN THE U.S., ENJOYS THE SAME "DUE PROCESS" RIGHTS AS AN AMERICAN CITIZEN. IF THIS IS SO, THEN NEITHER THE USG NOR A PRIVATE PERSON COULD REQUIRE, COERCE, OR RESTRAIN AN ALIEN DOCUMENTED BY EITHER OF THOSE TWO STATES FROM CHOOSING EITHER THE GDR OR THE FRG EMBASSY IN THE U.S. TO REPRESENT HIM ON CONSULAR OR OTHER MATTERS.

4. THIS BEING SO, IT SEEMS ADVISABLE TO US THAT THE U.S. DECLINE TO INCORPORATE INTO THE CONSULAR AGREEMENT ANY REFERENCES TO GDR LAW OR INDEED TO ANY GERMAN LAW. WE COULD SAY TO THE GDR NEGOTIATORS THAT THIS WOULD APPEAR TO US TO IMPOSE A LIMITATION ON CERTAIN RIGHTS ACCORDED ALIENS UNDER U.S. LAW. SUCH AN INCORPORATION, AFFECTING SUCH RIGHTS, COULD ONLY HAVE VALIDITY IF IT WERE TO BE RATIFIED IN A TREATY, SUCH AS A US/GDR CONSULAR CONVENTION WOULD APPEAR TO BE, OR AN EXECUTIVE AGREEMENT, AND WE DOUBT WHETHER SUCH RATIFICATION IS LIKELY AT THE PRESENT TIME IN THE U.S.

5. GDR NEGOTIATORS, WHILE FINDING THE U.S. POSITION PERHAPS INEXPLICABLE FROM THE STANDPOINT OF SOCIALIST
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BERLIN 05191 051242Z

STATE LAW AND THEORY, COULD HARDLY EXPECT THE U.S. TO ACCEPT PROVISIONS IN A CONSULAR AGREEMENT WHICH WOULD VIOLATE CERTAIN BASIC RIGHTS UNDER THE U.S. CONSTITUTION AND U.S. LAW. THIS VIEW MIGHT PERHAPS GIVE THEM A FACE-SAVING DEVICE FOR CONSENTING TO EXCISION OF REFERENCES TO GDR LAW.

6. THE U.S. COULD STATE, THAT, WITH RESPECT TO PRACTICAL

SITUATIONS THAT MIGHT ARISE IN THE GDR, IT DOES NOT ASK FOR REFERENCES TO U.S. LAW, BUT WOULD RATHER CITE INTERNATIONAL PRINCIPLES OF LAW (WHICH WE ASSUME THE DEPARTMENT CAN DEVELOP) AS THE BASIS FOR RECIPROCAL TREATMENT OF THE CITIZENS OF THE TWO PARTIES IN EACH OTHER'S COUNTRIES.

7. AT SOME POINT, A PUBLIC STATEMENT OF THE ESSENCE OF THIS POSITION SHOULD GO FAR TO SATISFY THE FRG THAT THE PRACTICAL RIGHT OF CHOICE OF A GERMAN CONCERNING THE CONSULAR REPRESENTATION HE WISHED WOULD BE ASSURED.

8. IT APPEARS TO US, FURTHER, THAT THE APPROACH OUTLINED IN 4 TO 7 ABOVE HAS THE ADDITIONAL VIRTUE OF AVOIDING U.S. INVOLVEMENT IN THE CONTINUING PROBLEMS OF FRG-GDR RELATIONS IN THE INNER-GERMAN CONTEXT. THESE MATTERS SHOULD BE LEFT TO THOSE TWO STATES AS FAR AS POSSIBLE.

9. WE RECOGNIZE THAT--POLITICALLY--A US-FRG RELATIONS ARE MORE IMPORTANT THAN US-GDR RELATIONS. FURTHER, WHEN CONSIDERING THE HISTORICAL COMMITMENT OF THE U.S. TO THE DEVELOPMENT OF INTERNATIONAL LEGAL STANDARDS, WE BELIEVE THAT THE APPROACH SET FORTH ABOVE HAS UTILITY.COOPER

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSULAR AGREEMENTS, NEGOTIATIONS, NATIONALITY, FOREIGN POLICY POSITION
Control Number: n/a
Copy: SINGLE
Draft Date: 05 FEB 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BERLIN05191
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750041-1124
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750271/aaaacmgj.tel
Line Count: 140
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: LIMDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: LIMDIS
Reference: 75 STATE 012391
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 04 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 APR 2003 by BoyleJA>; APPROVED <07 APR 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONSULAR NEGOTIATIONS: EMASSY VIEWS ON THE NATIONALITY QUESTION
TAGS: PFOR, PDIP, CGEN, GC, GE, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006